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Article 9

Taxation - Immunity of Federal Property from State and Local Taxes

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Art. IV, Domestic Relations Law, Laws of 1937, c. 669,[6] which clearly expressed the right of a married woman to maintain a tort action in her own name.

The technical distinction made in *Singer* v. *Singer* seems out of accord with the legislative intent of Section 6.015 to place women on a basis of equality before the law. If as a practical matter this construction should cause hardship, the legislature should amend the statute giving definite equality as to right to sue similar to that existing in New York.

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Taxation—Immunity of Federal Property from State and Local Taxes.—In reversing a Pennsylvania Supreme Court decision, in *United States & Mesta Machine Co.* v. *County of Alleghany,* 64 Sup. Ct. 908,88 L.Ed. 845 (1944), the United States Supreme Court reaffirmed the long standing immunity of federal property from state and local taxes.[1]

In the present case the war department contracted with Mesta Machine Co. for the manufacture of ordnance.[2] Since the plant was not equipped for this type of work, it was agreed that the additional machinery required should be furnished at Government cost and remain the property of the United States. Machinery was to be acquired by Mesta as independent contractor by purchase; Mesta could manufacture it; the government could furnish it. That which was bought or built was inspected and compensated by the government and title was to vest at delivery at site of work and inspection and acceptance. For rental of one dollar the government leased to Mesta

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[6] N. Y. STAT. Art. IV, No. 57, Domestic Relations Law, Laws of 1937. "Right of action by or against married woman and by husband or wife against the other, for torts—A married woman has a right of action for an injury to her person, property or character for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts, her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed, but must be proved. A married woman has a right of action against her husband for his wrongful or tortious acts resulting to her in any personal injury as defined in section 37a of the general construction law, or resulting in any injury to her property, as if they were unmarried, and she is liable to her husband for her wrongful or tortious acts resulting in any such personal injury to her husband or to his property, as if they were unmarried.

[1] McCulloch v. Maryland, 4 Wheat. 316 (1819), which case involved the state's right to tax issues of notes of a bank of the United States. The Court held it a tax on the means of the government to execute one of its powers and the sovereignty of the State did not extend to those means.

[2] Clallam Co. v. United States, 263 U.S. 341, 44 Sup. Ct. 121, 68 L.Ed. 328 (1923). Held that a state could not tax the property of a corporation organized by Federal Government by act of 1918 for production of war materials, the property which is conveyed to it, or bought with money of the United States.

and placed in its building equipment and machinery which was to be removed under government direction at the termination of the contract. To Mesta's previously determined assessment for *ad valorem* taxes, the County of Alleghany, Pa., added the value of the machinery. Mesta paid under protest the tax attributable to this increased assessment and took an appeal to the Court of Common Pleas which held that the machinery was owned by the United States and therefore for constitutional reasons could not be included. The Supreme Court of Pennsylvania reversed the decision and reinstated the assessment holding that it was not against the United States but against Mesta, operating for private purposes. Under state law this machinery for purposes of assessment was considered as part of the real estate upon installation, and it was deemed that the United States had only a reversionary interest.

The United States entered the case as an intervener and both it and Mesta appealed, the United States to protect its sovereignty and Mesta to protect itself from unlawful burdens placed on property in its possession as bailee. The Supreme Court had jurisdiction of the appeal.[3]

The Court held that war procurement policies settled under federal authority could not be limited by local law. Despite the claim that the United States had no delivery of possession or perfected title as required by state law, such property became exempt federal property upon inspection and approval.[4]

The county contended that the tax was not on the machinery but only on the land whose value was enhanced. However, it was held that the real nature of a tax, rather than characterization by state courts or legislatures determines the effect of the tax on federal right,[5] that the validity and construction of contracts through which the United States is exercising its constitutional functions is a question of federal law not controlled by the law of any state,[6] and that here the machinery was valued separately and added to the land

[3] 28 U.S.C. A. 344(a).
[4] Art. IV, § 3, cl. 2 United States Constitution. Art. I, § 8, cl. 18; Art VI, cl. 2.
[5] Carpenter v. Shaw, 280 U.S. 363, 50 Sup. Ct. 121, 74 L.Ed. 478 (1929). Held that the Supreme Court is not bound by characterization given to a state tax by state courts or legislatures where a Federal right is concerned.
[6] Clearfield Tr. Co. v. United States, 318 U.S. 363, 63 Sup. Ct. 573, 87 L.Ed. 838 (1942); Board of Comr's. of Jackson Co. v. United States, 308 U.S. 343, 60 Sup. Ct. 285, 84 L.Ed. 313 (1939); Utah Power and Light Co. v. United States, 243 U.S. 389, 37 Sup. Ct. 387, 61 L.Ed. 791 (1916); United States v. Ansoria Brass & Copper Co., 218 U.S. 452, 31 Sup. Ct. 49, 54 L.Ed. 1107 (1910); D'Oench, Dehme & Co. v. F.D.I.C., 315 U.S. 447, 62 Sup. Ct. 676, 86 L.Ed. 956 (1941); Deitrick v. Greaney, 309 U.S. 190, 60 Sup. Ct. 480, 84 L.Ed. 694 (1939); Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 62 Sup. Ct. 1, 86 L.Ed. 65 (1941).

assessment and therefore in effect a tax was laid on United States property.[7]

Early cases held that immunities had attached to the income or property or transactions of others because they dealt with or acted for the government.[8]

In recent cases immunity for the contractor's own property, profits and purchases has been denied.[9] Mesta was in the position of a bailee

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[7] Detroit Bank v. United States, 317 U.S. 329, 63 Sup Ct. 297, 87 L.Ed. 304 (1942). Held that giving federal estate tax lien on property passing at decedent's death priority over an innocent mortgagee, while relieving from the lien bona fide purchasers of property transferred inter vivos in contemplation of death, is not such discrimination as to violate the due process clause of the 5th amendment.

[8] Dobbins v. Commissioners, 16 Pet. 435 (1842); Collector v. Day, 11 Wall. 113 (1870); People of St. of N.Y. ex rel Rogers v. Graves, 299 U.S. 401, 57 Sup. Ct. 269, 81 L.Ed. 306 (1936). Held Federal Government may use a corporation as a means to carry into effect powers granted by the constitution. Osborn v. Bank, 9 Wheat. 738 (U.S. 1824); Owenboro National Bank v. Owenboro, 173 U.S. 664, 19 Sup. Ct. 573, 43 L.Ed. 850 (1898). Held a state is without power to tax national banks, except under permissive legislation of congress; Choctaw O. & Gulf R. Co. v. Harrison, 235 U.S. 292, 35 Sup. Ct. 27, 59 L.Ed. 234 (1914). In this case appellant leased and operated mines to which the Indians had title. Held, that gross revenue tax on coal miners or producers equal to percentage of gross receipts from total coal produced is a privilege tax which cannot be exacted from a federal instrumentality acting under congressional authority. Gillespie v. Oklahoma, 257 U.S. 501, 42 Sup. Ct. 171, 66 L.Ed. 338 (1921). Jaybird Mining Co. v. Weir, 271 U.S. 609, 46 Sup. Ct. 592, 70 L.Ed. 1112 (1925). Held that ore in possession of a lessee which was taken from restricted property of a Quapaw Indian leased by the government for development, from which the interests of the Indian have not been segregated, is not subject to state taxation. Federal Land Bank v. Crosland, 261 U.S. 374, 43 Sup. Ct. 385, 67 L.Ed. 703, 29 A.L.R. 1 (1922). Western Union Telegraph Co. v. Texas, 105 U.S. 460, 26 L.Ed. 1067 (1881). Held the telegraph company is an instrument of interstate commerce and the state cannot tax its occupation by placing a specific tax on each message sent out of the state, or sent by public officers on United States business. Indian Motorcycle Co. v. United States, 283 U.S. 570, 51 Sup. Ct. 601, 75 L.Ed. 1277 (1930). A sale of motorcycles to state agency for use in municipal police service is exempt from excise tax on sale of motorcycles by the manufacturer. LeLoup v. Port of Mobile, 127 U.S. 640, 8 Sup. Ct. 1380, 32 L.Ed. 311 (1887). Panhandle Oil Co. v. Mississippi ex rel Knox, 277 U.S. 218, 48 Sup. Ct. 451, 72 L.Ed. 857, 56 A.L.R. 583 (1927). Graves v. Texas Co., 298 U.S. 393, 56 Sup. Ct. 818, 80 L.Ed. 1236 (1935). N. W. Mut. Life Ins. Co. v. State of Wisconsin, 275 U.S. 136, 72 E.Ed. 202 (1927) Held a franchise tax on gross receipts of insurance company was not applicable to receipts derived from interest on United States bonds. Weston v. Charleston, 2 Pet. 449 (U.S. 1829). United States v. Richert, 188 U.S. 432, 23 Sup. Ct. 478, 47 L.Ed. 532 (1902) Held improvements made on lands to which United States held title but which were put in possession of Indians for their benefit remained immune from taxation. Cal. v. Central Pa. R.R., 127 U.S. 1, 32 L.Ed. 150 (1887) Held that since Congress has authority in exercise of its power to regulate commerce among the several states to construct or authorize individuals or corporations to construct railroads across the states and territories, an assessment of franchises conferred by United States was repugnant to the Constitution and laws of the United States.

[9] State. of Alabama v. King and Boozer, 314 U.S. 1, 62 Sup. Ct. 43, 86 L.Ed. 3, 140 A.L.R. 615 (1941). Question was whether King and Boozer, as sellers of lumber for construction of army camp for the United States, were infringing constitutional immunity of the United States from state taxation, by the exaction of a sales tax for which the seller was liable but which was to be

for mutual benefit and has some legal and beneficial interest in the property. When all the government has is a title and nominal interest, the whole value would be taxable to the equitable owner.[10] No attempt was made to segregate lessee-bailee's interest and therefore the tax was unlawful. The tax might have been sustained if the basis had been the taxpayer's leasehold on the government property or the increase in the value of the land because of the machinery.

Mr. Justice Roberts and Mr. Justice Frankfurter dissented on the ground that the court should follow state courts on non-federal ruling that the tax was on the contractor, that it was an *ad valorem* tax on the realty, and that increased cost to government is no unlawful burden.[11]

The federal government by constitutional grant has the inherent power to raise and support armies. No method by which it was to carry out this power was prescribed. The machinery in the Mesta case is an instrumentality to carry out the power to supply the army of the United States with arms. 61 *Corpus Juris* 372, "State taxation of instrumentality of federal government is not objectionable if it does not impair their usefulness or efficiency or hinder them from serving the government as they were intended to serve it." Just how a nondiscriminatory tax on the instrumentality in the present case would impair its usefulness is not shown. This is in accord with the dissenting opinion.

In 61 *Corpus Juris* 230 it is said that there is no reason why functions which could be accomplished by private corporations should be tax free. Had the government chosen to buy armaments from Mesta who furnished its own machinery, the machinery would be taxable although the burden, in increased sales price, finally would be borne by the purchaser, the United States.

In the principal case, the court said: "Benefits which a contractor receives from dealings with the government are subject to state income

collected from the buyer. Held—It was not infringed although the economic burden of the tax was on the United States. Graves v. N. Y. ex rel O'Keefe, 306 U.S. 466, 59 Sup. Ct. 595, 83 L.Ed. 927, 120 A.L.R. 1466 (1938). Held that a nondiscriminatory income tax on salary of examining attorney for HOLC, doesn't put unconstitutional burden on the federal government. James v. Dravo Contracting Co., 302 U.S. 134, 58 Sup. Ct. 208, 82 L.Ed. 155, 114 A.L.R. 318 (1937). Helvering v. Gerhardt, 304 U.S. 405, 58 Sup. Ct. 969, 82 L.Ed. 1427 (1937). Helvering v. Mountain Producers Corp, 303 U.S. 376, 58 Sup. Ct. 623, 82 L.Ed. 907 (1937).

[10] City of N. Brunswick v. United States, 276 U.S. 547, 48 Sup. Ct. 371, 72 L.Ed. 693 (1927). At termination of the war, property of the United States Housing Corp. organized to provide housing for war workers, was sold. Taxes the city assessed were unpaid and corp. refused to execute deed. Corp. held legal title only and therefore equitable owner was to pay the tax.

[11] Nickel v. Cole, 256 U.S. 222, 41 Sup. Ct. 467 (1920); State of Alabama v. King and Boozer, 314 U.S. 1, 62 Sup. Ct. 43, 86 L.Ed. 3, 140 A.L.R. 615 (1941); James v. Dravo Contracting Co., 302 U.S. 134, 58 Sup. Ct. 208, 82 L.Ed. 155, 114 A.L.R. 318 (1937).

taxation. Salaries received from it may be taxed. The fact that materials are destined to be furnished to the government does not exempt them from sales taxes imposed on the contractor's vendor. But in all of these case what we have denied is immunity for the contractor's own property, profits, or purchases." However, since the legal title of the machinery was in the United States and its ownership for assessment purposes had not been separated from that of the taxpayer, the property of the federal government was being taxed.

Wis. Central R.R. Co. v. *Price*,[12] held that a state has no right to tax property of the United States within its limits but every title in property whether inchoate or complete when vested in an individual is taxable unless expressly exempt. In *Van Brocklin* v. *Tenn.*,[13] it was held that immunity protected the private owner where Tennessee attempted to sell for state taxes lands which the United States owned at time taxes were assessed and levied but in which it had ceased to have any interest at time of sale because the tax had been laid against an interest of the government which was beyond the state's taxing power. A recent case held that an attempt by the Territory of Alaska to levy and collect taxes on cannery and fish traps used on the Annette Island Reservation through a lease between the Secretary of the Interior and Annette Island Packing Co., was void for it constituted a tax on an instrumentality of the United States used in the performance of its duties to its Indian wards.[14]

In effect application of the immunity ruling of the Mesta case would seem to give lessors a tax advantage over those who own their property. It would be expedient, therefore, that the the war acquired industrial property of the government be sold back into private ownership. If this is not done, it would seem that since the industrial plants valued at about 15 billion dollars acquired by federal government during the war should not remain permanently immune from state and local taxes, the local community, in order to offset the loss occasioned by this immunity, should make the taxpayer's leasehold the basis of the assessment. This method might be applied also in case of surplus government property which will probably be leased after the war.

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[12] 133 U.S. 496, 10 Sup. Ct. 341, 33 L.Ed. 687 (1889).
[13] 117 U.S. 151, 6 Sup. Ct. 670, 29 L.Ed. 845 (1886).
[14] Territory v. Annette Island Packing Co. (Fall, Secretary of the Interior, Intervenor), Wickersham, 6 Alaska 585 (1922).